A

**PP**

**v.**

**CHEAN HUA SEY & ORS**

B

HIGH COURT MALAYA, SHAH ALAM
TUAN ABANG ISKANDAR JC
[CRIMINAL APPLICATION NOS: 44-160-07, 44-161-07, 44-162-07, 44-163-07 & 44-199-07]
6 FEBRUARY 2008

C

***CRIMINAL PROCEDURE:*** *Charge - Illegal gambling - Whether illegal gambling is detrimental and prejudicial to public order under s. 4(1) of Emergency Ordinance (Public Order and Prevention of Crime) 1969 - Whether illegal gambling an activity against public order and prevention*

D *of crime*

***CRIMINAL PROCEDURE:*** *Habeas corpus - Emergency Ordinance (Public Order and Prevention of Crime) 1969, s. 4(1) - Detention order - Offence of illegal gambling - Whether basis for issuing detention orders flawed - Whether gambling prejudicial to public order within meaning of*

E *s. 4(1) - Signatory of detention orders not personally named - Whether detention order ambiguous and must be declared as invalid - Two detention orders issued in respect of each detainee - Whether existence of two detention orders justified issuance of writ of habeas corpus - Whether*

F *discrepancies occasioned injustice upon detainees - Whether detainees prejudiced by discrepancies - Burden of proof of injustice or prejudice*

The five applicants applied for issuance of writs of *habeas corpus*, challenging the validity of their detention pursuant to orders made by the Minister of Internal Security, under s. 4(1) of the

G Emergency Ordinance (Public Order and Prevention of Crime) 1969 ("the 1969 Ordinance"). The following grounds were raised by the applicants: (i) that the basis for issuing the detention orders was flawed because the activities purportedly engaged in by the five applicants, could not qualify as activities that were

H 'prejudicial to public order' within the meaning of s. 4(1) of the 1969 Ordinance. The applicants claimed that to be prejudicial to public order, the impugned activities must necessarily involve the element of violence. All the applicants were only involved in illegal gambling and non-payment of gaming taxes, which was devoid of

I any physical violence; (ii) that the detention orders were not personally named in the name of the signatory. Learned counsel

for the applicants contended that as the orders could have been signed by anybody, it was ambiguous and must be declared as bad and invalid in law; and (iii) that there were two detention orders issued in respect of each applicant. One was issued by the Minister of Internal Security and the other purportedly by the Deputy Minister of the same Ministry. As the law allows for only one order to be issued in respect of a set of impugned circumstances, the existence of two of such orders justified the issuance of the writ of *habeas corpus*.

**Held (dismissing all the applications of the five detainees):**

**(1)** Running illegal gambling activities had been ruled by the Courts as amounting to activities that could be detrimental and prejudicial to public order in relation to the said 1969 Ordinance. So, being involved in running illegal gambling activities could well be added on to this "no exhaustive list of types of offences" referred to as activities against public order and prevention of crime. As such, the complaint raised by the applicants that running illegal gambling activities could not form the legal basis to invoke s. 4(1) of the Ordinance for their detention cannot be sustained. (para 6)

**(2)** There exists a Ministerial Order Act – P.U(A) 2006 wherein was gazetted that the only name of the Minister of Internal Security was that of Dato' Seri Abdullah bin Ahmad Badawi. Dato' Seri Abdullah bin Ahmad Badawi had also affirmed an affidavit stating that he was the person who had signed on the detention order issued against each of the applicants. All the impugned detention orders were duly signed and affixed to them was the stamp of office of "Menteri Keselamatan Dalam Negeri, Malaysia." None of the applicants had filed in any affidavit-in-reply adverting to the fact that the signature appearing on the said orders was falsified or forged. As such, the signatory in the detention orders issued against all the five applicants was Dato' Seri Abdullah bin Ahmad Badawi. (paras 8 & 9)

**(3)** As it was the respondents themselves who had referred to the detention order issued by the Timbalan Menteri, it was for them to prove that there was only one order issued. The onus fell on the respondents to show affirmatively that no injustice had been occasioned to the applicants by the discrepancy. It lay on the respondents to show that there were no defects as would invalidate the detention orders. (paras 15 & 17)

**(4)** In order to vitiate a ministerial order of this nature, the omission or mistake that has been discovered on the face of record must be of such a nature that it has caused or occasioned a prejudice or injustice to the applicant. A mistake may be glaring, but if it has not prejudiced the applicant, it remains an innocuous one. For the mistake to be fatal to the order, it must be one that materially misleads the applicant in a manner that is so adverse to him, that no court of law can just stand idle and deny him any remedy such as a writ of *habeas corpus*. In assessing the impact of the mistake, the court may look at other available evidence before it, in its totality. The mistake must be tested to the events and ought not to be dealt with in isolation or in a vacuum or in a void. (para 26)

**(5)** The references to the words "Timbalan Menteri" were mere typographical errors, no correcting affidavits needed to be filed. The applicants were not in any way prejudiced in any manner by the apparent mistake in the notice issued to them under s. 5 of the said 1969 Ordinance, as evidenced by the real and actual appearance of the applicants before the advisory board which heard and considered their representations accordingly. (para 47)

**Case(s) referred to:**

*Ang Ghee Seng v. Minister of Home Affairs, Malaysia & Anor [1991] 3 CLJ 2766; [1991] 1 CLJ (Rep) 10 SC* ***(refd)***

*Lee Gee Lam v. Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor [1993] 4 CLJ 155* ***(refd)***

*Lim Thian Hock & Ors v. Minister of Home Affairs & Anor [1992] 4 CLJ 2289; [1992] 2 CLJ (Rep) 781 FC* ***(refd)***

*Mohd Fadzli Hashim v. Magistrate, Magistrate's Court, Butterworth & Ors [2000] 5 CLJ 326 HC* ***(refd)***

*Re PE Long & Ors [1976] 1 LNS 132* ***(refd)***

*Re Application of Tan Boon Liat [1976] 1 LNS 126* ***(refd)***

*Re Tan Boon Liat & Anor et al [1977] 1 LNS 110* ***(refd)***

*Su Yu Min v. Ketua Polis Negeri & Ors [2005] 3 CLJ 875 HC* ***(refd)***

*Tay Lay Beng v. Menteri Hal-Ehwal Dalam Negeri, Malaysia & Anor [2004] 8 CLJ 674 HC* ***(refd)***

*Zainab Othman v. Superintenent of Prison, Pulau Jerejak, Penang [1975] 1 LNS 202* ***(refd)***

**Legislation referred to:**

Emergency (Public Order and Prevention of Crime) Ordinance 1969, ss. 4(1), 5(1), (2), 11

Federal Constitution, art. 151(3)

*For the appellant - Tuan Abdul Wahab Mohammad (Najib Zakaria with him) DPP, Attorney General's Chambers*

*For the respondents - Wong Siew Nam; M/s Wong Siew Nam & Assoc*

*Reported by Amutha Suppiah*

## JUDGMENT

**Tuan Abang Iskandar JC:**

**[1]** These have been applications to issue writs of *habeas corpus* filed in by the 5 above-named applicants, who had challenged the validity of their detention pursuant to orders made by the Minister of Internal Security, under s. 4(1) of the Emergency Ordinance (Public Order and Prevention of Crime) 1969 ("the 1969 Ordinance"). Their learned counsels had indicated that all the applications involved the same points of law that could impact on the eventual outcome of their cases and had therefore agreed that the legal points raised as representative of those in these applications and be heard together at the same time and that the decisions on those points by this court be applicable to the facts obtaining in all these applications which, as submitted by learned counsels, are almost similar to each other in material particulars.

**[2]** There were numerous grounds forwarded in the respective applications as raised in their respective affidavits in support thereof. The respondents had also filed in the various affidavits-in-reply, additional affidavit and corrective affidavit by persons who were acquainted with the facts and circumstances surrounding these cases. However, by the time these applications were finally argued before me, the learned counsels for the five applicants had decided to narrow down these grounds to only three (3) as appeared in their written submissions. In essence, the said three legal grounds raised by learned counsels for the detainees have been as follows:

A i. That the basis for issuing the detention orders against the five applicants was flawed because the activities purportedly engaged in by the five applicants, could not qualify as activities that were 'prejudicial to public order' within the meaning of the relevant enabling legal provision, which is s. 4(1) of the
B Emergency (Public Order and Prevention of Crime) Ordinance, 1969 ('the 1969 Ordinance'). According to the argument forwarded on behalf of the applicants, to be prejudicial to public order, the impugned activities must necessarily involve the element of violence. It was reiterated that in the case
C before me, all the applicants were only involved in illegal gambling and non-payment of gaming taxes, which by their very nature were devoid of any semblance of physical violence. As such, the detention orders were not founded upon cogent legal justification and must therefore be set aside and that the
D writ of *habeas corpus* be issued to release the five applicants;

ii. That the detention orders which had been issued by the Minister of Internal Security against all the applicants, though were duly signed, they were nevertheless not personally named
E in the name of the said signatory. On account of this omission, it was the contention of learned counsel that all the said orders, which were the basis upon which the applicants were detained, were factually and legally defective. According to the learned counsel, as the orders could have been signed
F by anybody, it was ambiguous and must be declared as bad and invalid in law. It would follow therefore, it was submitted that the writs of *habeas corpus* must issue to secure the release of the five applicants; and,

G iii. That there were two detention orders issued in respect of each applicant. One was issued by the Minister of Internal Security and the other purportedly by the Deputy Minister of the same Ministry. As the law allows for only one order to be issued in respect of a set of impugned circumstances, the
H existence of two of such orders must be reason enough for this court to issue the writ of *habeas corpus*. It was also alleged by all the applicants that the situations so created had caused prejudice to them in the manner that impacted on their rights to make representations to the advisory board.

I

**[3]** The five applicants were represented at this hearing before me by learned counsels Mr. KY Wong and Mr Wong Siew Nam, while Mr. Abdul Wahab Mohammad and Mr. Najib Zakaria, both learned senior federal counsels, appeared for all the named respondents. After hearing parties' submissions on the above issues, I had delivered a brief ruling whereby, in essence, I had dismissed all the applications of the five detainees. I am now giving the reasons why these applications could not succeed, by going through the grounds (i), (ii) and (iii) in turn.

*(i) The Issue Of Activities Being 'Prejudicial To Public Order'*

**[4]** From the numerous affidavits affirmed by and on behalf of the respondents it is quite clear that the applicants were detained because of their illegal gambling activities over a good number of years. These activities were believed to have been done on a large scale and which, in the judgment of the Minister of Internal Security, were by no means as innocuous as the applicants had tried to make them out to be. The affidavit-in-reply affirmed by the Minister of Internal Security (encl. 15) bears testimony to this fact. The applicants had affirmed in their respective affidavits-in-support, that these activities were only illegal at most because they did not have the necessary valid gaming licences and that they had only evaded paying the gaming taxes which could be due therefrom. As such, it is not a case of them running an activity that is *ipso facto* illegal. Again, it was impressed upon me that there was no element of violence involved in these activities. The learned counsel cited the case of *Re PE Long & Ors* [1976] 1 LNS 132, where according to counsel, the court there had ruled that the factor involving the element of safety of people is paramount in the consideration as to whether an activity must be struck down on account of it being prejudicial to public order under the 1969 Ordinance.

**[5]** To this, the learned senior federal counsel ('SFC') had responded by referring to the affidavit-in reply affirmed by the Minister of Internal Security dated 8 October 2007, in particular Lampiran 'E' (encl. 15) and cited the case of *Re Application of Tan Boon Liat* [1976] 1 LNS 126. In that case, the court had ruled that drug trafficking activities came within the scope of the said 1969 Ordinance as well. The learned SFC had also cited the case of *Lim Thian Hock & Ors v. Minister of Home Affairs & Anor* [1992] 4 CLJ 2289; [1992] 2 CLJ (Rep) 781, where Vincent Ng

JC (as he then was) had held that activities that could be prejudicial to public order within the context of the said 1969 Ordinance, would include the running of illegal lotteries which do not necessarily involve violence. In 2005, Clement Skinner J, in the case of *Su Yu Min v. Ketua Polis Negeri & Ors* [2005] 3 CLJ 875, a case under the Restricted Residence Act, had occasion to brush aside an argument submitted before him that illegal gambling activities were akin to operating a coffee shop without a licence and had readily agreed with the Deputy Minister, who had issued the banishment order against the applicant, on the ground that illegal gambling activities could not be conducive to peace and public order in Kuching. The learned judge had therefore ruled that such activities were caught by the Restricted Residence Act and could be used as a valid ground for banishing the applicant to Kelantan, thereby dismissing the latter's application for *certiorari* to issue. To quote the learned Justice Clement Skinner in *Su Yu Mui*'s case *(supra)* this was what he had said at p. 878 therein:

> The applicant's attempt to equate or liken the running of an illegal 4-digit lottery to operating an unlicensed coffee shop was bizarre and over simplistic. There was a vast difference between serving coffee at an unlicensed coffee shop and organizing illegal gambling, which is what the game of 4-digit is a form of. If left unchecked, **illegal public gaming can constitute a threat to peace and public order**. (emphasis added)

**[6]** Indeed, going back to the case cited by learned counsel, namely the *Re P.E. Long @ Jimmy*'s case *(supra)* an attempt was made there actually, by learned counsel for the applicant to limit the operation of the said 1969 Ordinance only to acts concerned with use of violence. This was what the learned Justice Fred Arulanandom had actually said regarding the issue of violence in the context of the said 1969 Ordinance at p. 136 therein:

> The words "securing public order"

are indeed very wide in scope and its ambit is not circumscribed by the juxtaposition with the words

> the suppression of violence and the prevention of crime involving violence.

If it was the intention of the King to promulgate the said Ordinance purely for the suppression of violence and the prevention of crime involving violence, the words

> "securing public order" would be superfluous and under the established canons of construction nothing in an Ordinance should be rejected as being superfluous.

The learned justice went on to say, at the same page:

> ... and no exhaustive list of types of offences could be listed for inclusion in the recital and the words "securing public order" contemplated dealing with all acts which were a threat to peace, order and good government. Public order in ordinary language would simply mean order among the public for the good of the public.

In considering this issue, it is clear to me that running illegal gambling activities had been ruled by our courts as amounting to activities that could be detrimental and prejudicial to public order not only in relation to other legislations but more importantly, for the immediate purpose of this hearing, in relation to the said 1969 Ordinance, as was reflected succinctly in the observation made by Vincent Ng JC (as he then was) in *Lim Thian Hock*'s case *(supra)* and which was cited with approval in the Supreme Court case of *Lee Gee Lam v. Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor* [1993] 4 CLJ 155. Vincent Ng JC (as he then was) in *Lim*'s case *(supra)* had said:

> However, in regard to the first application it seems quite clear to me that what is intended in **section 4(1) of the Ordinance** is to confer on the Minister the power to issue a detention order based on any of the two grounds which by its very nature of expression, should be read disjunctively. The first limb of the section seeks to allow the Minister to detain: (a) a person who has acted in any manner prejudicial to public order (or, presumably social order in our society), which encompasses a whole gamut of variegated offences such as smuggling, **running illegal lotteries**, preaching religious heresy, or advocating communist or racialist ideology, **all of which do not necessarily involve violence**; and ... (emphasis added).

So, being involved in running illegal gambling activities could well be added on to this "no exhaustive list of types of offences" referred to as activities against public order and prevention of crime by Justice Arulanandom when he had ruled on the scope and ambit of the reach of the 1969 Ordinance, in *Re P.E. Long @ Jimmy*'s case *(supra)*. As such, I hereby rule that the complaint raised by the applicants before me on the ground that running

illegal gambling activities could not form the legal basis to invoke s. 4(1) of the Ordinance for their detention cannot be sustained in the light of the weighty authorities militating against it.

*(ii) The Issue Of Non-naming Of The Signatory Of The Detention Orders*

**[7]** According to the learned counsel for the applicants, such omission or failure to append beneath the signature the name of the signatory, had opened to doubts as to who had actually signed the said detention orders that were issued against them. According to him, the impugned orders could have been signed by anybody. He had cited before me the case of *Mohd. Fadzli Hashim v. Magistrate, Magistrate's Court, Butterworth & Ors* [2000] 5 CLJ 326 in support of his contention. What had happened in *Mohd. Fadzli*'s case *(supra)* was that the Government Medical officer who had signed on a certificate made under the Dangerous Drugs (Treatment and Rehabilitation) (Forms) Rules 1983 had likewise failed to append on the said certificate, his name beneath his signature. Acting on such a certificate, the magistrate had issued a detention order against the applicant for him to be detained at a detention center for the rehabilitation of drug addicts. When the matter was brought before the High Court for a writ of *habeas corpus* to issue, Hishammuddin J ruled that such omission by the Government Medical officer to append his name beneath his signature in the certificate was fatal. The learned justice therefore had struck down the omission as being an illegality because such act was required to be done as provided for under the relevant Rules, which had required the relevant name to be stated beneath the signature of the Government Medical officer who had purportedly issued the certificate. This was how the learned justice had dealt with the matter in his judgment, at p. 331 therein:

> The necessity to state the name below the signature becomes all the more imperative when one considers that the requirement to state the name of the doctor signing is not merely an administrative requirement but a statutory requirement. **It is a statutory requirement because the requirement is prescribed by the Minister by way of a subsidiary legislation.** (emphasis added).

**[8]** Before me, the learned SFC had disagreed that the said omission to put the name of the signatory in this case was fatal and submitted why he had said so. According to him, that there existed a Ministerial Order Act – PU(A) 2006 wherein was gazetted that the only name of the Minister of Internal Security is that of Dato' Seri Abdullah bin Ahmad Badawi. He had also referred this court to para. 13 of the affidavit-in-reply (encl. 15) dated 8 October 2007 and affirmed by Dato' Seri Abdullah bin Ahmad Badawi in response to all the affidavits-in-support of the applicants, wherein he had stated that he was the person who had signed on the detention order issued against each of the applicants. The said para. 13 reads as follows:

> 13. Merujuk kepada perenggan 5(b) dalam Affidavit Pemohon, saya sesungguhnya ingin mengulangi sekali lagi segala pengataan-pengataan saya di perenggan 4, 6, 7 dan 8 di atas dan mengatakan bahawa **saya telah menandatangani Perintah Tahanan Tersebut** atas tugas **saya sebagai Menteri Keselamatan Dalam Negeri**, Malaysia. Saya ingin menyatakan bahawa tiada keperluan undang-undang untuk menyatakan nama Menteri Keselamatan Dalam Negeri, Malaysia di dalam Perintah Tahanan tersebut. (emphasis added)

**[9]** It must be noted that all the impugned detention orders were duly signed and affixed to them was the stamp of office of "Menteri Keselamatan Dalam Negeri, Malaysia." Paragraph 13 of the said Minister's affidavit-in-reply effectively and positively reiterated that he was indeed the person who had signed on all the five detention orders involving all the five applicants in these matters before me. None of the applicants had filed in any affidavit-in-reply contesting that factual assertion by said the Minister of Internal Security. It is to be noted that there existed nowhere in the affidavits-in-support of any of the applicants adverting to the fact that the signature appearing on the said orders issued against them was in fact falsified or forged. As such, I was satisfied that the signatory in the detention orders issued against all the five applicants was Dato' Seri Abdullah bin Ahmad Badawi who was, at the material time, and who still is, the only person named as occupying the portfolio of "Menteri Keselamatan Dalam Negeri, Malaysia", as stated in the Ministerial Order Act PU(A)2006.

**[10]** Reverting to *Mohd. Fadzli*'s case *(supra)*, it is clear that the basis for Justice Hishamuddin J to issue the writ of *habeas corpus* for Mohd. Fadzli's release had been one premised upon a non-compliance of an imperative statutory duty by the said medical officer. But when I had queried the learned counsel whether there was a similar statutory requirement obtaining under the law immediately relevant to our case, he had conceded that there was none. That being so, quite obviously, the facts and circumstances in *Mohd. Fadzli*'s case *(supra)* can quite readily be distinguishable from those obtaining in this case and therefore it cannot assist the applicants' cause in that regard moving forward. So, on account of those reasons, I had agreed with the submissions by the learned SFC that the applicants must also fail on the issue of non-naming of the signatory beneath his signature in the detention orders which had been issued against and served on the five applicants.

*(iii) The Issue Of There Being Two Orders Of Detention Issued In Respect Of Each Applicant*

**[11]** The scenario as described by the learned counsel for the five applicants regarding this issue goes like this. With respect to the applicant Chean Hua Sey ('CHS') (no. 44-160-2007), the first detention order was issued by the Minister of Internal Security on 16 August 2007 and was served on him at 3.17pm, and on the same day and at the same place, a few minutes later, the 'second' detention order was issued to him purportedly by the Deputy Minister. Similar, though not identical, patterns emerged with respect to the other four applicants. Among others, the case of *Zainab binti Othman v. Superintenent of Prison, Pulau Jerejak, Penang* [1975] 1 LNS 202, was cited in support by learned counsel. In that case Chang Min Tat J (as he then was) issued the writ of *habeas corpus* as applied for, because there was a doubt created as to whether indeed there were two detention orders issued with respect to the same set of circumstances.

**[12]** In the affidavit-in-support affirmed by CHS dated 7 September 2007, para. 8 therein reads as follows:

> 8. Borang Notis Hak Membuat Rayuan tersebut juga adalah defektif dan tidak sah dari segi undang-undang kerana Notis tersebut adalah untuk membolehkan satu rayuan terhadap Perintah Tahanan yang dikeluarkan oleh Timbalan Menteri yang dibuat di bawah Seksyen 491 Ordinan tersebut.

(Sesalinan Notis Hak Membuat Rayuan adalah dilampirkan dan ditandakan sebagai eksibit "CHS-3")." 'CHS-3' reads as follows in the relevant portion therein:

> Notis Hak membuat rayuan. Ordinan Dadrurat (KA & MJ) 1969, Kamu: Chean Hua Sey KPT:630428-01-5753 adalah dengan ini diberitahu bahawa kamu berhak di bawah Sek: 5 Ordinan Darurat (Ketenteraman Awam dan Mencegah Jenayah 1969, membuat rayuan terhadap Perintah Tahanan yang diperbuat oleh Timbalan Menteri di bawah Seksyen 4(1) Ordinan tersebut (Perintah yang mana telah pun diserahkan kepada kamu) dan rayuan ini mesti dikemukakan kepada Setiausaha Lembaga Penasihat dalam tempoh 14 hari daripada tarikh kamu tiba di Pusat Tahanan yang tersebut didalam Perintah Tahanan itu." According to learned counsel for CHS, based on this Notice, exhibited as CHS-3, it is clear that the order referred to was the one issued by the "Timbalan Menteri.

**[13]** The four other applicants also made references to like notices to make representations served on them by the relevant police officers pertaining to the said detention order. Although the same notice said that the order had been served on the applicants "(Perintah yang mana telah pun diserahkan kepada kamu)", none of the affidavit-in-support affirmed by all the five applicants had affixed to it any detention order purportedly issued by the "Timbalan Menteri" and when I asked counsels in court whether they had received any such order, the learned counsels conceded that no such order was ever served on any of the applicants.

**[14]** The learned counsels had submitted in this court that their ground for raising this issue was based on the documents served on them by the respondents and that an inference could be derived therefrom, that there could indeed be that second order issued by the Timbalan Menteri as outlined above. The applicant CHS also referred to the affidavit of SAC II Low Hong Soon (encl. 8) affirmed on 5 October 2007, in particular para. 10 therein which reads as follows:

> 10. Seterusnya saya menyatakan bahawa mulai pada 16-8-207, Pemohon tidak lagi berada dalam tahanan dan jagaan pihak polis. Pada tarikh tersebut, Pemohon telah diletakkan di bawah Perintah Tahanan yang dikeluarkan oleh **Timbalan Menteri Keselamatan Dalam Negeri** mengikut Seksyen 4(1) Ordinan Darurat (Ketenteraman Awam dan Mencegah Jenayah) 1969 ... (emphasis added)

**[15]** According to learned counsels, it was the respondents themselves who had referred to the detention order issued by the Timbalan Menteri as in 'CHS3', and it was for them now to prove that there was only one order issued. With respect, I agreed with that contention on that score. The onus must fall on the Respondents to show affirmatively that no injustice had been occasioned to the applicants by the apparent discrepancy.

**[16]** According to learned counsels, the respondents should have filed in corrective affidavits if there had been mistakes committed any where during the whole exercise regarding these detentions of the applicants. Learned counsels had also cited the Federal Court case of *Re Tan Boon Liat & Anor et al* [1977] 1 LNS 110 where it was held in the following terms:

> Further, preventive detention is a very serious invasion of personal liberty. Certain safeguards are provided by law for the protection of the subject and must be followed scrupulously ... . In *Ex parte Johannes Choeldi & Ors.* [1960] MLJ 184, 186 Rigby J said to the effect that where the personal liberty is concerned an applicant in applying for a writ of *habeas corpus* is entitled to avail himself of any technical defects which may invalidate the order which deprives him of his liberty. Where the detention is not in accordance with law such detention is bad and the person is entitled to be released forthwith.

**[17]** Suffice it is for me to say here that indeed such is the state of the law and I am bound by it. But having said that, the question before this court is, do the evidence as they stand before me justify me to issue a writ of *habeas corpus* to the five applicants on the ground that there were technical defects which could invalidate the impugned orders? It lies on the respondents to show that there were no such defects as would invalidate the detention orders.

**[18]** The learned SFC had urged me not to accede to these applications and he denied that there was any such detention order issued against the applicants by the "Timbalan Menteri" and according to him, any reference to the order issued by the "Timbalan Menteri" in these applications have been honest typographical errors or mistakes. He had argued before me that taken in the totality of the affidavit evidence filed by the various deponents on behalf of the respondents, one can reasonably conclude without a doubt that indeed the words "Timbalan

Menteri" wherever they had appeared had been mere typographical errors. He also submitted that such errors were innocuous and had not in any manner occasioned any injustice to any of the applicants. In the circumstances, he submitted that there was no need to file in any corrective affidavits to set right the apparent mistakes. He had cited the case of *Ang Ghee Seng v. Minister of Home Affairs, Malaysia & Anor* [1991] 3 CLJ 2766; [1991] 1 CLJ (Rep) 10 SC and the case of *Tay Lay Beng v. Menteri Hal-Ehwal Dalam Negeri, Malaysia & Anor* [2004] 8 CLJ 674 HC, in support of his proposition.

**[19]** In the *Ang Ghee Seng*'s case *(supra)*, it was held by the Supreme Court that the mistake in the spelling of the name was obviously a typing error and in all the documents pertaining to the detention, the Identity Card number of the appellant was correctly referred to in every one of them. Since the error was clearly typographical, the learned Judicial Commissioner was correct in rejecting the appellant's argument. The validity of the detention order was not adversely affected by the typographical error.

**[20]** In the *Tay Lay Beng*'s case *(supra)*, the issue there was whether a defect in the affidavit of police officer reporting the circumstances of a detenu's arrest, in respect of the actual date of arrest of the detenu, to the designated officer was a mere typographical error and whether the detenu was prejudiced by such error bearing in mind that there was no correcting affidavit affirmed by the respondent with a view to put right an apparent mistake. Balia Yusof bin Wahi JC (as he then was) held that, based on the consideration of all the evidence adduced before him, he was satisfied that the impugned date '10 August 2001' in the affidavit was a mere misstatement and a typographical error, as there were ample evidence adduced establishing the fact that the detenu was in fact arrested on 26 March 2003. As such, that misstatement in the affidavit had occasioned no prejudice to the detenu. Balia Yusof Wahi JC (as he then was) therefore had decided as follows, at p. 680 therein:

> In my considered view, having perused the facts stated in para.3 of the affidavit in encl. 7 and exhibit 'WAN 1' accompanying it and as against the whole background of the case and all the other facts which are gathered from the affidavits filed in this application, I hold that the mistake as to the date in para.3 of the encl.7 is not material and is not prejudicial to the applicant. I accept it as an established fact that the applicant was arrested on 26 March 2003 and clearly the date 10 August 2001 in the said para.3 is a typographical error at the most.

**[21]** The learned SFC had impressed upon me to apply the approach taken by my learned brother Justice Balia in *Tay Lay Beng*'s case *(supra)* to the circumstances obtaining in this case, on account of the fact that they are quite parallel in nature. Needless to say, and rather obviously, the learned counsels for the applicants had submitted otherwise.

**[22]** As such, in order for me to come to a proper conclusion on this issue of whether there were indeed two detention orders issued against each applicant, I must necessarily peruse through the numerous affidavits affirmed and filed by the various deponents.

**[23]** As was submitted by the learned counsels, it was the respondents who by serving on CHS the notice under s. 5 ('CHS3') suggested that there was an detention order issued by the "Timbalan Menteri" and that the said notice was to enable the applicant to appeal to the advisory board with respect to that detention order issued by the "Timbalan Menteri". Because of that, CHS had affirmed in his affidavit-in-support of his application for *habeas corpus* the two following paragraphs:

> **para. 8:** Borang Notis Hak Membuat Rayuan tersebut juga adalah defektif dan tidak sah dari segi undang-undang kerana Notis tersebut adalah untuk membolehkan suatu rayuan terhadap Perintah Tahanan yang dikeluarkan oleh Timbalan Menteri yang dibuat di bawah seksyen 491 Ordinan tersebut.

**[24]** 'CHS3' was exhibited in his affidavit in support. Paragraph 10 of the same affidavit, reads as follows:

> **para. 10:** Saya juga sesungguhnya tidak pernah diberi peluang untuk membuat rayuan terhadap Perintah Tahanan yang di keluarkan oleh YAB Menteri Keselamatan Dalam Negeri Malaysia kepada Lembaga Penasihat.

**[25]** In other words, these were the prejudices that had been allegedly occasioned to the applicant CHS and similarly to the other four applicants who had received identical notices as appended in their respective affidavits-in-support. It must be admitted that at first blush and without more, the said paragraphs did appear to deliver their intended messages rather clearly and convincingly. The question is whether the available evidence as was laid before this court bear testimony to these averments that such injustice had indeed been visited upon them.

**[26]** My reading of *Tay Lay Beng*'s case *(supra)* has been that in order to vitiate a ministerial order of this nature, the omission or mistake that has been discovered on the face of record must be of such a nature that it has caused or occasioned a prejudice or injustice to the applicant. A mistake may be glaring, but if it has not prejudiced the applicant, it remained an innocuous one. For the mistake to be fatal to the order, it must be one that materially misleads the applicant in a manner that is so adverse to him, that no court of law can just stand idle and deny him any remedy such as a writ of habeas corpus. In assessing the impact of the mistake, the court is entitled to look at other available evidence before it, in its totality. The mistake must be tested to the events and ought not to be dealt with in isolation or in a vacuum or in a void. It is my considered view that the approach taken by Balia Yusof Wahi JC (as he then was) in the *Tay Lay Beng*'s case *(supra)* was, with respect, a proper one to be employed in cases such as this case before me. Indeed, the Supreme Court in the case of *Ang Ghee Seng*'s case *(supra)* has shown that a mistake in spelling the middle name of the applicant was not fatal, as having regards to the other related factors such as the number of the identity card in other related documents, it could be reasonably deduced that the name referred only to the same person and that person was the applicant. No injustice was thereby occasioned in such a circumstance and no correcting affidavit needed to be affirmed as there existed sufficient evidence for the court to come to a definitive conclusion.

**[27]** The learned SFC had invited me to look at all the affidavits filed by the various deponents in order to see whether the mistakes in relation to the references to the words "Timbalan Menteri" and "Timbalan Menteri Keselamatan Dalam Negeri, Malaysia" as they appeared in the related documents in these applications were typographical errors and if so, whether they were prejudicial to all or any of the applicants.

**[28]** Looking at the relevant documents and affidavits filed by the deponents on behalf of the respondents with respect to the applicant Chean Hua Sey ('CHS'), those said words "Timbalan Menteri" appeared at three (3) places, namely:

1) In document marked as 'CHS3' ie, the purported notice of right to make representations to the advisory board;

A 2) In the affidavit of SAC Law Hong Soon II (encl. 8) dated 5 October 2007 specifically in para. 10 therein; and

3) In the affidavit tambahan of Mohd. Fairuz bin Mohd. Nasir (encl. 16) dated 11 December 2007, specifically in paras 4 and 5 therein.

B

**[29]** Having identified their respective presence therein, it is my task now to determine whether they are mere typographical mistakes or whether they were more sinister than just being innocuous, in the sense that they had occasioned prejudice to the CHS and the other four applicants. If there were any prejudice to the cause of the applicants, then a writ of *habeas corpus* must issue. I now look at these in turn.

C

*1) Regarding The Words "Timbalan Menteri" In CHS3*

D

**[30]** Having perused through the affidavits by the deponents on behalf of the respondents, it is clear that the first time that the words "Timbalan Menteri" had surfaced in the whole exercise involving the detention of CHS must be the one that appeared in 'CHS3'. To my mind, the words in that phrase as they appeared in 'CHS3' ought not to be read in isolation. Rather it should be read in the context of the events that had preceded its introduction into the fray, so to speak. Up until that point in time, every deponent was referring only to the detention order issued against CHS by the Minister of Internal Security. It is my view as well that these words ought not to be viewed in isolation, in the sense that it's solution must lie only within the said document, namely CHS3 alone. The nature and purpose of a document such as CHS3 is such that it is a notice informing a detainee on whom a detention order had just been served with the said detention order, of his rights to make the necessary representations in respect of the said detention order, to the advisory board pursuant to s. 5 of the said 1969 Ordinance. In other words, a notice such as CHS3 is in the nature of a consequential notice. It cannot stand alone by itself. It is a notice that must relate to a prior order issued under s. 4 of the Ordinance. Let us look at the facts as revealed in the affidavits in this case. As regards s. 5 of the Ordinance, no such notice was served on CHS referring to a detention order issued by the Minister of Internal Security. Instead the notice served on CHS, as in CHS3, referred to a detention order issued by the Timbalan Menteri. But in reality, as affirmed in the various affidavits on behalf of the respondents in

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I

this case, all the deponents were at all material times referring to their respective roles in dealing with the detention order that was issued by the Minister of Internal Security. It started with the affidavit of the Minister of Internal Security himself where he affirmed that he had issued the order on 16 August 2007 having been satisfied that the activities of the applicants were prejudicial to public order, thereby necessitating him to issue the respective detention order against the applicant CHS. Then, there was the affidavit of Mohd. Irza bin Dahari, the Special Officer assigned to the said Minister who affirmed that he was instructed by the said Minister to prepare the detention order in respect of CHS. The Minister of Internal Security had also affirmed similarly worded affidavits-in-reply in the case of *Liou Cher Pau* (44-163-2007) (encl. 15) affirmed on 8 October 2007, in para. 13 therein; in the case of *Sim Chung Mine* (44-199-2007) (encl.16) affirmed on the 2 December 2007, in para 13 therein; in the case of *Goh Kai Beng* (44-161-007) (encl. 13) affirmed on 8 October 2007, in para 13 therein; and, in the case of *Goh Kai Shing* (44-162-2007) (encl. 12) affirmed on 8 October 2007, in para 12 therein. Then there was the affidavit of DSP Tan Hiap Seng, the Police Officer who had served the said order issued by the Minister of Internal Security and also served the notice exhibited as 'CHS3' on CHS. For this purpose, I must look at the affidavit-in-reply of DSP Tan Hiap Seng, (encl. 7) who had served the order of detention issued by the Minister of Internal Security against CHS, as well as the notice 'CHS3'. He said that he had served the original copy of the detention order issued by the Minister of Internal Security on CHS on 16 August 2007. He then explained it to CHS and CHS had signed on the said order as an acknowledgment that he had understood the same. In para. 9 of his affidavit, DSP Tan said that he then proceeded to inform CHS of his right to make representations to the advisory board in respect of the said order. It became more clear in para 10 of his affidavit when he said:

> Saya telah menerangkan kepada Pemohon berhubung **notis** tentang hak hak Pemohon untuk membuat representasi terhadap **Perintah Tahanan itu** kepada Lembaga Penasihat." (emphasis added) on CHS a few minutes after he had explained and served the detention order issued by the Minister of Internal Security on him must have been the consequential notice in respect of the said same order of detention issued by the Minister of Internal Security. Nowhere in his affidavit did DSP Tan Hiap Seng ever mention the title "Timbalan Menteri" as having issued an order

of detention on CHS. That being the case, I see no plausible reason why the said notice in CHS3 that was served on CHS who had just been served with the order of detention by the Minister of Internal Security should refer to CHS's rights to appeal against a detention order that was purportedly issued by the "Timbalan Menteri". It is my finding that the reference to the words "Timbalan Menteri" can only be explained away as a mere typographical error or mistake and its appearance in the notice 'CHS3' was an anomaly that had no justification whatsoever for it being there, if not for it being a typographical mistake. Nowhere in his affidavit did DSP Tan say anything with respect to an order of detention issued by the "Timbalan Menteri" against CHS. So, I had found as a fact that when he affirmed para. 10 in his affidavit, and made a reference to 'Perintah Tahanan itu', he was in fact referring to the detention order issued by the Minister of Internal Security which he had served on CHS a few minutes earlier on the same day, at the same place. As such, there was no need to affirm a corrective affidavit as there existed sufficient evidence in the affidavit for this court to come to a definitive finding on that issue. In the other 4 applications, I had sighted similar averments in the affidavits-in-reply by the relevant witnesses, namely, as follows:

(i) In the case of *Liau Cher Pau* (44-163-2007), the affidavit-in-reply of C/Insp. Ee Hup Leong – (encl. 8) that was affirmed on 7/11/07, in particular paras. 7, 8, 9, 10, 11 therein were relevant.

(ii) In the case of *Sim Chung Mine* (44-161-2007), the affidavit-in-reply of DSP Tan Hiap Seng (encl. 14), that was affirmed on 7/11/07, in particular paras 7, 8, 9, 10, 11 therein were relevant.

(iii) In the case of *Goh Khai Beng* (44-161-2007) the affidavit-in-reply of Insp. Siau Siau Seng (encl. II), that was affirmed on 7/11/07, in particular paras 7, 8, 9, 10 therein were relevant.

(iv) In the case of *Goh Khai Shing* (44-162-2007) the affidavit-in-reply of Insp. Siau Sian Seng (encl.11).that was on affirmed 5/10/07 in particular paras. 7, 8, 9,10 were relevant.

**[31]** As similar circumstances obtained in the other four applications relating to this issue, my ruling on them must necessarily also be the same as the one I had reached for the case involving CHS.

*2) Regarding The Affidavit Of SAC II Law How Soon On The Detention Order Issued By "Timbalan Menteri Keselamatan Dalam Negeri*

**[32]** Learned counsel had also referred to the affidavit of SAC II Law Hong Soon which had referred to the order issued by the "Timbalan Menteri Keselamatan Dalam Negeri" as tending to lend support to their submission that another detention order was issued by Timbalan Menteri on CHS on the same date. SAC II Law Hong Soon had said in para. 10 of his affidavit:

> Seterusnya saya juga menyatakan bahawa mulai pada 16-8-2007, Pemohon tidak lagi berada dalam tahanan dan jagaan polis. Pada tarikh tersebut, pemohon telah diletakkan di bawah perintah tahanan yang dikeluarkan oleh Timbalan Menteri Keselamatan Dalam Negeri mengikut seksyen 4(1) Ordinan Darurat (Ketenteraman Awam dan Mencegah Jenayah) 1969. Semenjak dari tarikh-tarikh tersebut dan sehingga kini Pemohon tidak lagi berada dalam tahanan dan jagaan polis. Oleh itu, apa-apa pengataan yang ada kaitan dengan pihak polis dalam permohonan ini adalah tidak berkaitan. Saya sesungguhnya percaya ke atas pemohon adalah sah dan teratur dan selanjutnya memohon agar permohonan pihak Pemohon ditolak.

**[33]** From the reading of his affidavit as a whole I noted that this deponent's role was limited to events prior to the issue of the detention order by the Minister of Internal Security. Earlier in his affidavit, he had said that he had referred the matter relating to the arrest of the applicant CHS to the Minister of Internal Security. Although he referred in para 10 of his affidavit, to the detention order that was issued by the Timbalan Menteri nevertheless, he did not exhibit the said order in his affidavit. As such, I would not put too much weight on his assertion on that issue and also having taken into account the totality of the other available evidence in the affidavits of the other deponents on behalf of the respondents, the irresistible conclusion that could be derived from those circumstances could lend support to the fact that the reference by him to a detention order issued against CHS must in all probability have been a mistake. In the whole scheme of things pertaining to this matter, I have found as a fact that the words "Timbalan Menteri" in para. 10 must be attributable to a genuine typographical error. All the while prior to adverting to that fact in para 10, SAC II Law Hong Soon had been referring to the arrest of CHS to the Minister of Internal Security, not the "Timbalan Menteri".

**[34]** I had sighted similar affidavit affirmed by the same deponent in the other three applications and they are as follows:

(i) In the case of *Liou Cher Pau* – (44-163-2007), the affidavit in reply by SAC II Lau Bong Soon (encl. 12) affirmed on 7 November 2007, para 10 – "Timbalan Menteri" was relevant.

(ii) In the case of *Sim Chung Mine* – (44-199-2007), the affidavit in reply by SAC II Law Hong Soon (encl. 13) affirmed on 7 November 2007, para 10 was relevant.

(iii) In the case of *Goh Kai Beng* – (44-161-2007), the affidavit in reply by SAC II Law Hong Soon (encl. 12) that was affirmed on 7 November 2007 in para. 10 was relevant.

(iv) There was no such affidavit in reply in the case of *Goh Kai Shing* – (44-162-2007).

As similar circumstances had obtained before me on this issue with respect to the other three (3) applications above, I had also ruled likewise accordingly.

*3) Regarding The Affidavit Tambahan Of Mohd. Fairuz Bin Mohd. Nasir*

**[35]** The words "Timbalan Menteri Keselamatan Dalam Menteri" also appeared in the affidavit tambahan (encl. 16) of the Secretary to the advisory board namely Mohammad Fairuz b Mohd Nasir, in particular, paras. 4 and 5 therein. I shall quote them verbatim as follows:

> 4. Merujuk kepada perenggan 7 dalam Afidavit Pertama, saya sesungguhnya ingin menambah dan menjelaskan bahawa pada 6-10-2007, setelah menimbangkan representasi yang dibuat oleh Pemohon, Lembaga Penasihat telah membuat syor-syor mengenai representasi tersebut kepada Yang Dipertuan Agong. Selanjutnya, setelah menimbangkan syor-syor Lembaga Penasihat tersebut, pada 10-10-2007, Yang Dipertuan Agong telah memperkenankan Perintah Tahanan yang dibuat oleh Timbalan Menteri Keselamatan Dalam Negeri terhadap Pemohon. Saya tidak dapat menzahirkan syor tersebut kerana saya berpendapat dengan berbuat demikian adalah bertentangan dengan kepentingan Negara menurut Seksyen 11 Ordinan tersebut dan Perkara 151(3) perlembagaan Persekutuan.

5. Saya sesungguhnya menyatakan bahawa pengataan-pengataan di dalam perenggan 4 di atas tidak dinyatakan di dalam Afidavit Pertama saya sebelum ini, adalah kerana pada tarikh saya mengikrarkan Afidavit Pertama tersebut, pihak Lembaga Penasihat masih belum lagi menghantar syor mengenai representasi Pemohon kepada Yang Dipertuan Agong dan Pihak Lembaga Penasihat juga belum menerima perkenan dari Yang Dipertuan Agong berhubung Perintah Tahanan yang dibuat oleh Timbalan Menteri Keselamatan Dalam Negeri terhadap Pemohon.

**[36]** For this, there was a corrective affidavit (encl. 20) affirmed by Mohammad Fairuz, as paras 4 and 5 therein which specifically dealt with errors that appeared in the affidavit tambahan (encl. 16) Those said paragraphs read:

4. Merujuk kepada perenggan 4, baris ke 7 perenggan 5, baris ke 6 dalam Afidavit Tambahan Saya, khususnya kepada perkataan-perkataan berikut:

    4. Merujuk kepada perenggan 7 dalam Afidavit pertama, saya sesungguhnya ingin menambah dan menjelaskan bahawa pada 6-10-2007, setelah menimbangkan representasi yang dibuat oleh Pemohon, Lembaga Penasihat telah membuat syor-syor mengenai representasi tersebut kepada Yang Dipertuan Agong. Selanjutnya, setelah menimbangkan syor-syor Lembaga Penasihat tersebut pada 10-10-2007, Yang Dipertuan Agong telah memperkenankan Peirntah Tahanan yang dibuat oleh Timbalan Menteri Keselamatan Dalam Negeri terhadap Pemohon. Saya tidak dapat menzahirkan syor tersebut kerana saya bependapat dengan berbuat demikian adalah bertentangan dengan kepentingan Negara menurut Seksyen 11 Ordinan tersebut dan Perkara 151(3) perlembagaan Persekutuan.

5. Saya sesungguhnya menyatakan bahawa pengataan-pengataan di dalam perenggan 4 di atas tidak dinyatkaan di dalam Afidavit Pertama saya sebelum ini, adalah kerana pada tarikh saya mengikrarkan Afidavit Pertama tersebut, pihak Lembaga Penasihat masih belum lagi menghantar syor mengenai representasi Pemohon kepada Yang Dipertuan Agong dan Pihak Lembaga Penasihat juga belum menerima perkenan dari Yang Dipertuan Agong berhubung Perintah Tahanan yang dibuat oleh Timbalan Menteri Keselamatan Dalam Negeri terhadap Pemohon.

A Saya sesungguhnya menyatakan bahawa perkataan Timbalan Menteri Keselamatan Dalam Negeri di perenggan 4, baris ke 7 dan perenggan 5, baris ke 6 dalam Afidavit Tambahan Saya adalah perkataan yang dinyatakan secara salah dan merupakan kesilapan yang tidak disengajakan. Saya dengan takzimnya menyatakan bahawa perkataan yang sebenarnya di perenggan 4, baris ke 7 dan pada perenggan 5, baris ke 6 dalam Afidavit Tambahan Saya tersebut adalah Menteri Keselamatan Dalam Negeri.

B

5. Saya dengan suci hati menyatakan bahawa kesilapan yang tidak disengajakan pada perenggan 4, baris 7 dan perenggan 5, baris ke 6 dalam Afidavit Tambahan Saya tersebut bukanlah disengajakan. Saya sesungguhnya percaya saya mempunyai tanggungjawab kepada Mahkamah yang mulia ini untuk menyatakan fakta-fakta yang benar dan tepat.

C

**[37]** Indeed the corrective affidavit with respect to the application D by CHS had put the record straight by direct expression. But it was my finding that even without that corrective affidavit, there existed on record sufficient evidence for a reasonable tribunal to come to a definitive finding that such words as "Timbalan Menteri" were typographical errors. I had also noted that in respect of the E four other applications, the same words "Timbalan Menteri Keselamatan Dalam Negeri" had appeared in the affidavits of both Mohd. Fairuz and Suhaila bte. Ibrahim, both Secretaries to the advisory board when reporting that the King had consented to give approval to the board' recommendations pursuant to the F order of detention issued by the "Timbalan Menteri Keselamatan Dalam Negeri"

**[38]** Suhaila bte Ibrahim had said in her affidavit-in-reply (encl. 7) in the application of Goh Kai Beng, para. 7 therein, as follows: G "Pada 26 September 2007, setelah menimbangkan representasi yang dibuat oleh pemohon, Lembaga Penasihat telah membuat syor-syor mengenai representasi tersebut kepada Yang Di Pertuan Agong. Selanjutnya, setelah menimbangkan syor-syor Lembaga Penasihat tersebut, pada 5 Oktober 2007, Yang Dipertuan Agong H telah memperkenankan Perintah Tahanan yang dibuat oleh Timbalan Menteri Keselamatan Dalam Negeri di bawah s. 4(1) Ordinan tersebut terhadap pemohon. Saya tidak dapat menzahirkan laporan dan syor-syor yang dibuat oleh Lembaga Penasihat kerana berpendapat dengan berbuat demikian, ia adalah bertentangan I dengan kepentingan Negara menurut s. 11 Ordinan tersebut dan perkara 151(3) Perlembagaan Persekutuan." Again, my view is that this reference to the Timbalan Menteri Keselamatan Dalam Negeri

must be appreciated in the context of the whole affidavit which primarily had been referring to the hearing of the representations made by the applicant in respect of the order of detention that was issued to him by the Minister of Internal Security. All the preceding paragraphs in the said affidavit were referring to the detention order that was issued by the Minister of Internal Security right from the reason for the hearing by the advisory board until the point in time when the advisory board had decided to forward its recommendations to the Yang Di pertuan Agong based on the representation made by the applicant in response to the detention order issued by the Minister of Internal Security. Apart from that reference in para. 10 in her affidavit to the words Timbalan Menteri there was no other mention of the same words anywhere else therein. As such, I find as a fact that such words had been inserted in para. 10 as a typographical error. I would rule similarly in the issue with respect to the other applicants as they appear in like circumstances.

**[39]** There was the affidavit of Mohammad Fairuz bin Mohd Nasir who affirmed that the advisory board hearing was convened to hear appeal by way of representations arising from the detention order issued by the Minister of Internal Security in respect of CHS. The affidavit of Nik Mohamad Faidza bin Nik Jaafar and those of two other deponents affirmed affidavits alluding to their roles in interpreting the detention order issued by the Minister of Internal Security to CHS are rather telling as well.

*4) Having Established That The Words "Timbalan Menteri" And "Timbalan Menteri Keselamatan Dalam Negeri" As They Had Appeared Above, The Next Consideration Is To See Whether Those Mistakes Had Occasioned A Failure Of Justice Or Prejudice To The Applicant CHS*

**[40]** Basically the issue is whether CHS had actually been denied of his rights to make representations against the detention order issued by the Minister of Internal Security. Looking at the affidavits-in-reply to the application made by CHS, I find that DSP Tan Hiap Seng in his affidavit had explained to CHS about his rights to make representations to the advisory board under s. 5(2) of the said 1969 Ordinance. Mohammad Fairuz b. Mohd Nasir, the secretary of the advisory board in encl. 9 had said in his affidavit-in-reply that the board had finally sat and heard the

representations made by CHS against the detention order made by the Minister of Internal Security on 19 September 2007 in the presence of counsels KY Wong and Wong Siew Nam at Pusat Pemulihan Akhlak Simpang Renggam Johor.

**[41]** The relevant paragraphs in the said affidavit of Mohd. Fairuz read as follows:

> Saya Mohammad Fairuz Bin Mohd. Nasir (No. K/P: 840115-08-5879) seorang warganegara Malaysia yang cukup umur dan beralamat di Lembaga Penasihat, Jabatan Perdana Menteri, Aras 3, Blok Barat, Bangunan Perdana Putra, Pusat Pentadbiran Kerajaan Persekutuan, 62502 Putrajaya dengan ikhlas dan jujur mengikrarkan perkara-perkara berikut:
>
> > Representasi Pemohon terhadap Perintah Tahanan bertarikh 16-8-2007 yang dikeluarkan oleh Menteri Keselamatan Dalam Negeri iaitu Dato' Seri Abdullah Bin Haji Ahmad (selepas ini dirujuk sebagai "Perintah Tahanan tersebut") ke atas Pemohon di bahwah Seksyen 4(1) Ordinan Darurat (Ketenteraman Awam & Mencegah Jenayah) 1969 (selepas ini dirujuk sebagai "Ordinan tersebut") yang dibuat melalui Borang Representasi (Rayuan) bertarikh 17-8-2007 (selepas ini dirujuk sebagai "Borang 1 tersebut") berhubung dengan Perintah Tahanan tersebut yang telah diterima melalui pos oleh Lembaga Penasihat pada 27-8-2007. Salinan Borang I tersebut adalah sepertimana yang dilampirkan dan ditandakan di sini sebagai eksibit "MF-1".
>
> Pada 28-8-07 pihak Lembaga Penasihat telah menghantar satu Notis Pendengaran Representasi (selepas ini dirujuk sebagai "Borang II") di bawah Kaedah 5(1) Kaedah-Kaedah tersebut kepada Pemohon yang memberitahunya mengenai tarikh, masa dan tempat Lembaga Penasihat akan bersidang untuk mendengar representasi Pemohon berkaitan dengan Perintah Tahanan yang telah dibuat terhadapnya. Borang II tersebut telah diserah pada 30-8-2007 dan diterjemahkan isi kandungannya oleh Encik Ramesh a/l Subramaniam dalam Bahasa Melayu yang mudah difahami kepada Pemohon. Pendengaran Representasi Pemohon telah ditetapkan pada 5-9-2007. Walau bagaimanapun pada 5-9-2007, semasa Pemohon hadir di hadapan Lembaga Penasihat, Pendengaran Representasi Pemohon telah ditangguhkan kepada tarikh yang lain iaitu kepada 19-9-2007. Penangguhan Pendengaran Representasi Pemohon itu telah dimaklumkan juga kepada Pemohon secara lisan pada hari tersebut. Seterusnya pada 5-9-2007 pihak Lembaga Penasihat telah sekali lagi menghantar satu Notis Pendengaran Representasi (selepas ini dirujuk sebagai

"Borang II") di bawah Kaedah 5(1) Kaedah-Kaedah tersebut kepada Pemohon yang memberitahunya mengenai tarikh, masa dan tempat Lembaga Penasihat akan bersidang untuk mendengar representasi Pemohon berkaitan dengan Perintah Tahanan yang telah dibuat terhadapnya. Borang II tersebut juga telah diserah pada 5-9-2007 dan diterjemahkan isi kandungannya oleh Encik Harun Bin Musa dalam bahasa Melayu yang mudah difahami kepada Pemohon. Pendengaran Representasi Pemohon telah ditetapkan pada 19-9-2007. Oleh yang demikian, seterusnya pada 19-9-2007 pendengaran representasi terhadap Pemohon telah didengar oleh Lembaga Penasihat dengan kehadiran Pemohon dan peguam Pemohon KY Wang & Wang Siew Nam di Pusat Pemulihan Simpang Renggam, Johor. Salinan Borang II tersebut adalah sepertimana yang dilampirkan serta ditandakan di sini sebagai eksibit "MF-2".

**[42]** As such, Mohd. Fairuz had denied the allegations made by CHS in para. 10 of his affidavit-in-support of his application for *habeas corpus*.

**[43]** In the case of *Liou Cher Pau*, a similar affidavit-in-reply by Mohd. Fairuz appeared as encl. 13 in para 6. In the cases of *Sim Chung Mine*, the relevant para appeared in encl. 10 and para. 8 therein it was stated by him that the applicant was given the right to be represented by counsel to make representations against the detention order made by the Minister of Internal Security. In the case of *Goh Khai Shing* the affidavit was in encl. 12 and in para. 8 therein, the applicant was given similar right as well. For the case of *Goh Khai Beng*, in the affidavit of Suhaila bte Ibrahim, appearing in para. 8 therein, the applicant was given the right to be represented by counsel to make representations against the detention order issued by the Minister of Internal Security. Again, applying the same principles to them, I had ruled that no injustice had been occasioned on the applicants.

**[44]** The various deponents from the advisory board confirmed in their affidavits-in-reply that the advisory board had been convened to hear an appeal from the applicants pursuant to detention orders issued by the Minister of Internal Security not by the Deputy Minister. As admitted by learned counsels, none of the applicants had received any order of detention issued by the Deputy Minister of Internal Security. That being the case, they could not have prosecuted their appeal against that order before the board as they would not have known the reasons justifying their

A detention by the Timbalan Menteri. Under the said 1969 Ordinance, a detention order issued under s. 4(1) thereunder must be accompanied with the reasons outlining the grounds upon which the order was issued against the detainee. Indeed in this case the learned counsels had conceded during hearing before me
B that they had argued their appeal based on the reasons for the detention given by the Minister of Internal Security. Based on the above, how could the applicant CHS now say that he had been prejudiced when in fact his counsels had availed themselves of due process before the advisory board. My finding was that he knew
C that the notice under s. 5(1) of the 1969 Ordinance related to the detention order was made by the Minister himself and that although there had been a mistake in naming the Timbalan Menteri as the issuer of the order in the notice as in CHS3 issued under s. 5, received by him, I found as a fact too, that CHS was
D not prejudiced by the mistake.

**[45]** Then there was the affidavit of Nik Mohd Faiza b Nik Jaafar (encl. 11). He was at the material time the Penguasa Pusat Pemulihan Akhlak Simpang Renggam Johor. According to para. 4
E of his affidavit, CHS was brought into the said Pusat Pemulihan Akhlak on 16 August 2007 under an order of detention issued by the Minister of Internal Security. Paragraph 5 of his affidavit said that he had reminded CHS about his rights to make representations against the said order of detention and in this
F respect he was assisted in ensuring that CHS fully understood the proceedings by getting the assistance of detective corporal Lim Ek Ak who translated to CHS in the Hokkien dialect. In para. 8 he said that he had given CHS Borang 1 to be filled in by CHS for the purpose of making his representations to the advisory board.
G According to Nik Mohd Faiza, CHS had indeed signed on the 'Borang 1' which he said he had duly sent by post to the advisory board on the same day. The relevant portions of his affidavit-in-reply are now reproduced as follows:

H
> Saya, NIK MOHAMAD FAIDZA BIN NIK JAAFAR (No. K/P: 640813-03-5899) seorang warganegara Malaysia yang cukup umur dan beralamat di D2, Kuarters Penjara, Simpang Renggam Johor dengan sesungguhnya berikrar dan menyatakan dengan sebenarnya perkara-perkara berikut:

I

Saya menyatakan bahawa Pemohon telah dibawa masuk ke Pusat Pemulihan Akhlak Simpang Renggam, Johor pada 16-8-2007 di bawah suatu Perintah Tahanan oleh Menteri Keselamatan Dalam Negeri iaitu Dato' Seri Abdullah Bin Haji Ahmad (selepas ini dirujuk sebagai "Perintah Tahanan tersebut") di bawah Seksyen 4(1) Ordinan Darurat (Ketenteraman Awam dan Mencegah Jenayah) 1969 (selepas ini dirujuk sebagai "Ordinan tersebut").

Seterusnya saya telah mengarahkan Jurubahasa cina loghat Hokkien, D/Kpl Lim Ek Ak untuk berbual-bual dengan Pemohon di dalam bahasa cina loghat Hokkien untuk mempastikan kedua-dua mereka saling faham-memahami bahasa yang dipertuturkan. D/Kpl Lim Ek Ak kemudiannya memaklumkan kepada saya beliau berpuas hati Pemohon memahami bahasa cina loghat Hokkien yang beliau gunakan. Selepas itu barulah D/Kpl Ek Ak menterjemahkan isi kandungan eksibit "ABHA-1" dalam Afidavit Dato' Seri Abdullah Bin Haji Ahmad serta menerangkan hak-haknya untuk membuat representasi dan haknya untuk mendapatkan peguam dalam bahasa cina loghat Hokkien kepada Pemohon. Segala tindakan dan perbuatan D/Kpl Lim Ek Ak adalah di dalam penglihatan dan pendengaran saya.

Setelah terjemahan dibuat, D/Kpl Lim Ek Ak telah memaklumkan kepada saya bahawa beliau telah menerangkan kepada Pemohon isi kandungan eksibit "ABHA-1" dalam Afidavit Dato' Seri Abdullah Bin Haji Ahmad serta akan hak-haknya untuk membuat representasi dan haknya untuk mendapatkan khidmat peguam serta isi kandungan Borang I dalam bahasa cina loghat Hokkien. Pemohon mengakui beliau faham terjemahan D/Kpl Lim Ek Ak.

Selanjutnya saya telah menyerahkan 3 salinan Borang I di bawah Kaedah 3(2) Kaedah-Kaedah tersebut kepada Pemohon bagi tujuan membuat representasi kepada Lembaga Penasihat. Pemohon telah mengisi ketiga-tiga salinan Borang I tersebut dan menyerahkan kembali 1 salinan Borang 1 di bawah Kaedah-Kaedah tersebut yang telah diisi dan ditandatangani oleh Pemohon (selepas ini disebut sebagai "Borang 1 tersebut") di hadapan saya pada 17-8-2007. Saya kemudiannya telah mengemukakan 1 salinan Borang 1 tersebut kepada Lembaga Penasihat melalui pos pada hari yang sama.

Saya sesungguhnya dengan tegas menyatakan bahawa Pemohon telah pun diberitahu tentang hak-hak beliau untuk membuat representasi dan mendapatkan khidmat peguam.

**[46]** I had found similar averments in the affidavit-in-reply of the said Nik Mohd. Faidza in respect of the other four applicants as follows: in the case of *Liou Cher Pau* in encl. 11 in paras. 4 to 10 therein; in the case of *Sim Chung Mine*, in encl. 12 in paras. 4 to 10 therein; in the case of *Goh Khai Beng*, in encl 10 in paras. 4 to 10 therein; and, in the case of *Goh Khai Shing*, in encl. 6 in paras 4-10 therein. Applying the same principles to the similar circumstances in these four cases, I had come to the same conclusion in each of these four cases as I did in the case involving CHS.

**[47]** In the circumstances such as those obtaining in these applications before me, I was of the considered view that as the references to the words "Timbalan Menteri" were mere typographical errors, no correcting affidavits needed to be filed. I have found that there existed sufficient evidence in the affidavits for me to so conclude. I also ruled that the applicants were not in any way prejudiced in any manner by the apparent mistake in the notice issued to them under s. 5 of the said 1969 Ordinance, as evidenced by the real and actual appearance of these applicants before the advisory board which heard and considered their representations accordingly.

**[48]** As such, I had considered these applications in their entirety and for reasons as stated above, I had found all the issues raised by the applicants as grounds that might necessitate this court to issue the writ of *habeas corpus* to release all of them, to be devoid of merit. To recap, I had ruled that the grounds upon which the Minister of Internal Security had been satisfied were within the legal embrace of the phrase "prejudicial to public order" under the said 1969 Ordinance. There have in fact been cases decided by our courts that strongly support such finding by me to that effect. That being so, the 1st complaint premised as such must fail. On the non-naming underneath the signature of the signatory in the detention order, I had ruled there was no statutory obligation placed upon the Minister to do just that. In that respect, the case of *Mohd. Fadzil Hashim (supra)* as has been seen, can be readily distinguishable on the facts. On top of that, there was the Ministerial Order Act PU(A) 2006 that was duly gazetted, which effectively put it beyond doubt what the name of the signatory was by virtue of his portfolio as indicated in the said order. His affidavit-in-reply (encl. 15) asserting that he had indeed signed those detention orders remained unrebutted by any of these

applicants. And lastly, I had ruled that on the totality of the available evidence before me in the various affidavits filed in these applications, the words "Timbalan Menteri" which had appeared at the various identified places in the related documents had been mere typographical errors. There was nothing sinister about them in the sense that none of the applicants had been prejudiced by such errors and as such, in the circumstances of this case, the said errors were innocuous. In the upshot therefore, all these applications must be dismissed accordingly.